IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 23 of 1995

in

SPECIAL CIVIL APPLICATION No 3083 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? 1 to 5 No : NO

STATE OF GUJARAT

Versus

M.P. PARMAR

Appearance:

1. LETTERS PATENT APPEAL No. 23 of 1995
M/S PATEL ADVOCATES for Appellants No. 1-2
MR PF MAKWANA for Respondent No. 1 (Absent)

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 24/01/2002

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. None remained present for the respondent.

2. By this appeal under Clause 15 of the Letters Patent, the judgment of the learned single Judge allowing the petition and directing the appellant to reinstate the respondent in service with full backwages and all other consequential benefits including seniority and promotion with costs of Rs.1,500/- is challenged. The original petitioner and respondent herein, a doctor and District Health Officer, was chargesheeted for the alleged acts of serious misconduct and, after an elaborate departmental enquiry and findings thereon, he was removed from service with immediate effect under Rule 6 (7) of the Gujarat Civil Service (Discipline and appeal) Rules, 1971, by the order dated 16.1.1991 which was quashed by the impugned judgment.

2. The learned single Judge has concluded in the impugned judgment that the respondent was thrown out of service by a stroke of pen for no fault and, in the Court's opinion, the respondent had not committed any misconduct involving moral turpitude. It is also concluded that the disciplinary authority had failed to consider the view taken by this Court in H.P.THAKORE v. STATE OF GUJARAT & OTHERS [20 G.L.R. 109], wherein it was held that punishment was not and could not be the end in itself. On that basis, it is also concluded in the impugned judgment that the punishment of removal from service of the respondent, who is a qualified doctor and who had served with the Department since more than 20 years, was too harsh. In short, according to the impugned judgment, the respondent was not guilty of any misconduct on the one hand and the punishment was too harsh on the other.

3. With the above foreground, the essential basic facts of the case are that the respondent was, by charge sheet dated 9.3.1987, charged with four different misconducts, in substance alleging that, when he was working as District Health Officer, Class I (DHO) at Mehsana District,

(i) he had purchased medicines at higher rates even though rate contract was in force for some medicines and put the

government to the loss of Rs.1,00,768.85;

(ii) he had purchased at higher rates from private dealers mattresses, pillows, steel couches, bed sheets etc. instead of purchasing the same from government recognised stores and caused the loss of Rs.82,880/-;

(iii) although the Health Committee of the District Panchayat had decided to incur expenditure upto 25% of the grant allotted for medicines and equipments for clinics and hospitals, he crossed that limit without obtaining approval and incurred total expenditure to the tune of Rs.19 lakhs and

(iv) after receiving rates from only one party and without obtaining competitive rates, he purchased several medicines and equipments for the dispensaries and hospitals.

On these charges of financial irregularities and causing losses to the government, an enquiry by an officer of the level of Commissioner of Health and Ex-Officio Secretary was held wherein, upon denial of the charges by the respondent, evidence was led and opportunity of hearing was given. After detailed discussion of the charges, the relevant evidence, the defence of the respondent and the submissions of the Presenting Officer, the Commissioner of Departmental Enquiry recorded the finding of fact that all the four charges levelled against the respondent stood proved. No case was made out even before the learned single Judge in his petition by the respondent to indicate any infraction of the principles of natural justice in the departmental proceedings. However, a conclusion is reached in the impugned judgment that charge No.(i) was unsustainable as it was against the principles of natural justice. Such conclusion is drawn on the basis that the purchases in question were made by the Purchase Committee of the District Panchayat and the respondent was not solely responsible for the purchases of medicines and instruments. As for the other charges, it is observed in the impugned judgment that the respondent had given detailed explanation about superior quality of the materials which was not considered and which showed non application of mind in appreciating the evidence. Thus, a conclusion was drawn that the enquiry report was based on no evidence and, therefore, it was

not sustainable for being perverse. Unfortunately, even after an elaborate exercise of re-appreciating the evidence as regards the first charge, only a conclusion of the respondent not being solely responsible is drawn and the other three charges are held to have been not proved only on the ground of the explanation of the respondent having not been considered and, even after such finding of no evidence, the punishment is held to be too harsh and the direction to reinstate with full backwages with all other consequential benefits including seniority and promotion is issued. Such exercise of power under Articles 226 and 227 of the Constitution is based upon the observations as under in the impugned judgment:

> "The power of the High Court under Articles 226 and 227 is not only to fill up the deep holes into impugned order but also to repair the cracks in the order which is brought under challenge by the delinquent."

4. Going through the record of the case, it is evident that the basic premise as regards Charge No.(i), namely that the Purchase Committee of the District Panchayat had made the purchases, was incorrect. The Resolutions Nos.75 and 85 gave powers to the respondent to call for rates through advertisement and fix the agency for the supplies. It is concluded in the enquiry report that irregular purchases could not be justified on the ground that purchases were done as per the orders of the Committee as the D.H.O., i.e. the respondent, as the senior-most officer and Member Secretary, was required to apprise the Committee of the rules and regulations particularly when rate-contract was in operation. Accordingly, the charge of putting the government to a loss of Rs.1,00,768.85 was held to have been proved. Similarly, as regards the other charges, the explanation and defence of the respondent was duly and elaborately considered by the Commissioner of Departmental Enquiry and the findings could not have been brushed aside on the spacious ground of non-application of mind in appreciation of the evidence. We do not find the conclusions drawn by the learned single Judge to be sustainable on actual analysis of the material on record.

5. The learned counsel for the appellant relied upon the ratio of the judgment of the Apex Court in STATE BANK OF INDIA & OTHERS v. SAMARENDRA KISHORE ENDOW AND OTHERS [(1994) 2 SCC 537] in support of the submission that in exercise of the powers of judicial review, the Court ought not to interfere with the punishment even if it is

too harsh in its opinion and, at the most, the matter can be remanded to the disciplinary authority. The judgment in DEPOT MANAGER, A.P.S.R.T.C. v. P. BASHA AND ANOTHER [(1999) 9 SCC 190] was relied upon to submit that even in case the punishment of dismissal was found to be disproportionate, the High Court cannot substitute the order of punishment by no punishment at all.

6. At this stage, it would also be apposite to take note of the obvious and well-established constraints in exercise of revisional or writ jurisdiction under Article 226 or Article 227 of the Constitution. It is observed by the Apex Court in APPAREL EXPORT PROMOTION COUNCIL v. A.K.CHOPRA [AIR 1999 SC 625] that:

> "17. ....The High Court appears to have overlooked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an Appellate Authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty......."

7. In the facts of the present case, the impugned judgment being based upon contradictory conclusions of

the respondent not being guilty of any misconduct and the punishment being too harsh and the factual conclusions having been reached on the basis of incorrect premises and after transgressing the jurisdictional limits of the Court, it has to be set aside. Accordingly, the appeal is allowed and the impugned judgment is hereby set aside. In the facts and circumstances, there shall be no order as to costs.

Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)